IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: LARSON, K. et al.	Conf. No.: 4111
Application No.: 10/674,515	Art Unit: 2617
Filed: September 30, 2003	
Title: EMERGENCY NOTIFICATION SYSTEM USING PRESENCE, TRIANGULATION, AND WIRELESS TELEPHONY	Examiner: CONTEE, Joy K.

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In addition to the Notice of Appeal which is being concurrently filed, Applicants respectfully request a Pre-Appeal Brief Conference to consider the issues raised in the Office Action dated January 29, 2007, that finally rejected claims 1-5, 7-12 and 14, and the Advisory Action dated June 5, 2007.

I. Navarro and Eaton Fail to Render Claims 1-5, 7-12 and 14 *Prima Facie* Obvious

The Examiner has finally rejected claims 1-5, 7-12 and 14 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. Appln. No. 2003/0143974 to Navarro ("Navarro") in view of U.S. Pat. No. 6,888,811 to Eaton et al. ("Eaton"). Applicants submit that the combination of Eaton and Navarro fail to show each and every element of the rejected claims as required under §103. Moreover, Applicants submit that the rejection failed to provide adequate motivation to support an obviousness rejection.

A. Navarro and Eaton fail to teach or suggest, at least, "determining … that the user is a member of a class intended to receive said alert," as recited in independent claims 1 and 8.

The Examiner indicated that Navarro fails to teach the above-cited feature.[1] The Examiner attempts to cure these admitted deficiencies by combining Navarro with the teachings of Eaton, and purports that "Eaton reads on Applicants' claimed subject matter since the mobile terminal identifies itself as a member of class of devices with wide area capabilities."[2]

Applicants submit that Eaton merely teaches a portable device 100 which may communicate using a short range WLAN protocol and a wide area communications system (col. 5, lines 3-7; col. 5, lines 21-25). During its operation, the portable device 100 detects the presence of a smart network access point 130, and then identifies itself to the smart network access point 130 as a member of class of devices having wide area communication capabilities (col. 12, lines 18-22). The identification information taught by Eaton is based upon the networking capabilities of the portable device 100, and not upon whether a user is a member of an intended class to receive an alert.

Eaton further teaches that once the portable device is allowed access to the short range WLAN through the access point 130, the access point 130 sends location data to the portable device 100 (col. 12, lines 32-36). The portable device 100 may then transmit a location sensitive information request via the wide area wireless transceiver 104 to the wide area communications system 116 (col. 12, lines 46-49).

The Examiner further clarified the rejection in an Advisory Action, asserting that "when the portable device identifies itself to the smart network access point (or base station) as a member of class of devices having wide area communication capabilities (col. 12, lines 18-22) and based on the portable devices profile information stored therein (col. 8, lines 1-66), it is also

[1] Final Office Action (mailed January 29, 2007): page 3, lines 7-8.
[2] Office Action: page 2, paragraph 1.

disclosed that the user of the that portable device is a member of an intended class to receive an alert from the wide area communications system in using that portable device" [3] (sic).

Applicants submit that Eaton teaches that the portable device 100 stores device profile information which includes device battery life, device battery capacity, device processing power, and access to both short range WLANs and wide area communication systems. The device profile information may further include dial up networking, facsimile, printing, TCS-binary, TCS-AT, Personal Area Networking, audiovisual, Object Exchange protocol, and still imagery. Eaton further teaches that a profile is a set of rules that are followed to insure interoperability for that profile. (See col. 8, lines 1-12.)

Eaton goes on to teach that the device may further include a device identity 128 for uniquely identifying the portable device 100. The device identity is a unique selective call address in the wide area communication system 116 and also in the short range WAN 114. The device identity 128 enables the transmission of a message from the wide area communications system 116 and/or the short range WLAN 114 only to the portable device having the specified device identity, and identifies the messages and responses received by the wide area communications system 116 and/or by the short range WLAN 114 from the portable device 100 with the device identity 128. (See col. 8, line 62 - col. 9, line 11.)

Applicants submit Eaton is silent with respect to having the device 100 determine whether a user is a member of a class intended to receive an alert. The device identity 128 taught by Eaton is distinguished from the features of claims 1 and 8, as the device identity only pertains to information relating to the device itself.

Accordingly, Applicants submit that the rejection of independent claims 1 and 8 should be withdrawn.

[3] Advisory Action (mailed June 5, 2007)

B. The motivation to combine the teachings of Navarro and Eaton is not adequate.

The Examiner asserted that one of ordinary skill in the art would be motivated to modify Navarro by Eaton's teaching to "include determining that the user is a member of a class intended to receive an alert for the purpose of contacting only users in a location sensitive area, (e.g., wireless local area network)." (See Office Action, page 3, lines 11-14.) Applicants respectfully disagree.

Applicants submit that this combination would be redundant as Navarro already uses the geographic position of the mobile station 106 as one factor in determining where to broadcast emergency information ([0019], lines 1-6). Specifically, Navarro discloses that the "base station 104 may either transmit the emergency message to all the mobile stations 106 communicating with the base station 104 or determine the position of each mobile station 106 and only transmit the message to those identified to be in a danger area. Determination of the position of the mobile station 106 may be accomplished in a variety of manners know in the art, such as global positioning, triangulation, etc." (See [0019], lines 13-20.)

II. Dependent Claims and Rejections thereof under 35 U.S.C §103

Claims depending from claims 1 and 8 rejected under §103 to Navarro and Eaton are allowable at least by virtue of their dependency from their allowable base claims.

III. Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number listed, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 50-1602 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Date: June 29, 2007

Respectfully submitted,

For: Scott L. Lowe
Registration No. 41,458

McGrath, Geissler, Olds & Richardson, PLLC
PO BOX 1364
Fairfax,VA 22038-1364
1.703.621.7140